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1948.

File No. O-Railways 48

Legal **DEPARTMENT**

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Subject:—

Opinions under the

Indian Railways

Act; 1890

P.H.L. 5

File No. O-Railways 48

Std. Sectt. Slip 41 B e.

178-A

C O N T E N T S.

Legal Department File No.O.Railways/48.

Sr.No.	R.I./U.No.	Subject.	Pages.
		Opinions under the Indian Railways Act, 1890.	
1.	O.No.1502/6-2-48.	Sec.13 Cl.(c). Re: Public Road. Railway crossing and gates to be constructed on--	1 - 2
2.	O.No.6129/31-5-48.	Sec.47(1) Rules 9 & 11 of the Rules made under the Railways Act. Re: Recovery of wharfage charges from the customer whose goods were lying on the Railway premises.	3 - 4
3.	O.No.6257/2-7-48.	Re: Recovery of wharfage charges in respect of goods lying on the Railway premises and which were seized by the police whether Government is liable to pay wharfage charges.	5 - 6
4.	O.No.9503/9-10-48.	Sec.13. Question whether Railway Administration is liable to maintain Rail-way level crossings which were constructed by the Railway Authorities at the instance of Government.	7 - 8
5.	O.No.9863/22-10-48.	Re:Refund of wharfage and demurrage charges.	9 - 10

R.I.N.26/5/

5C.

29/5

K.S.R.
29/5

Re: Public Road Indian Railways Act, 1890.

Office of the R.L.A.

A public road in clause (c) of section 15 of the Indian Railways Act, need not necessarily be one existing when the railway was constructed. In this connection attention is invited to clause (b) where the words used are "public road constructed before the making of a railway". Consequently, if it be the intention of the legislature that clause (d) should apply only in respect of an old public road, that clause would have been worded accordingly. If, however, the Board does not agree with this interpretation the only alternative would be to make a requisition under section 11(3)(b). For the present the Public Works Department may write to the Railway Board to reconsider.

Sd/- P.N.Lad. 6/2

Remembrancer of Legal Affairs.

U.R. to P.W.D. No.1302 dated the 6th February 1948.

E.N.N.26/5/
4C.

Office of the R.L.A.

Recovery of wharfage.

Indian Railways Act and Rules thereunder.
Rules Vand 11.

It appears that Messrs.Govindji Tricumdas were given a permit to export 25 bales of handloom satranjis from Bombay to Shalimar on 5-6-1946. A surprise check was made at Wadi Bunder while the bales were being tendered to Railway Authorities for booking, and it was detected that of these 25 bales 11 bales contained towels, handloom chaddars and cotton goods. These 11 bales were seized on 5-6-1946 for breach of clause 3 of the Cotton Textile (Control of Movement) Order, 1946, and taken possession by the police on 15-7-1946. Thereafter, Messrs.Govindji Tricumdas were prosecuted and convicted and these 11 bales were forfeited to Government by the Magistrate. The Railway Authorities desire that the wharfage for the period from 5-6-1946 to 20-7-1946 during which period these 11 bales were lying on the Railway premises should be recovered from Messrs. Govindji Tricumdas. The question raised for the consideration of the R.L.A is ~~m~~ whether this wharfage can be ecovered from them.

Under rule 9 of the Rules made under section 47(1) clause (f) of the Railways Act, wharfage charges are leviable for such period as the goods would be liable for such charges under these rules. Under rule 11 the Railway Administration shall have a lien on goods for wharfage. If wharage is not paid and the goods ~~claim~~ taken delivery of, such goods would be deemed to be unclaimed under rule 14 and liable to sale under rule 21; and surplus proceeds arising out of such sale after payment of all charges and expenses due to the Railway administration shall be required to be paid to the person or persons thereto entitled (see rule 22). In the present case 11 bales in question were detained in the railway

premises.....

premises as they were seized by the police. If therefore follows that the detention of goods was not due any default on the part of Messrs.Govindji Tricumdas. Even assuming that the Railway administration could lawfully levy the wharage on the goods for such detention under the orders of the police, they could have at the most claimed a lien on these bales and requested the Court to order forefeiture of them subject to the payment of wharfage charges, which was not done. It is at anyrate clear that Messrs.Govindji Tricumdas cannot be held liable for payment of the wharfage on account of these 11 bales.

Sd/- P.M.Lad. 29/5

Remembrancer of Legal Affairs.

U.H. to C.S.D.,No.5129 dated the 31st May 1948.

H.E.H.26/5/

4C.

Office of the R.L.A.

Indian Railways Act and Rules thereunder.

Whether wharfage payable by Government.

R.L.A's opinion No.5129 dated 31-5-1948.

A lien as defined in Hammond v.Barclay is "the right of one man to retain that which is his possession, belonging to another, till certain demands of him, the person in possession are satisfied". The lien subsists only so long as possession lasts. If possession is voluntarily parted with the lien is lost. Where however the person is deprived of possession by fraud or force, the lien will continue. Again, if the person entitled to the lien parts with goods for a specific purpose, the lien is not lost(see Iyer's law of Contracts pp.899-900). In the present case the Railway Administration had a lien over the goods for the wharfage and parted with those goods as they were required by the Police in connection with the prosecution of Messrs. Govindji Trikumdas. Consequently the Railway Administration did not lose lien over the goods and could have enforced it until the goods were sold. Since however the goods have now been sold the lien would no longer be available to the Railway Administration against the purchaser of goods after forfeiture under the orders of the Magistrate. The Railway Administration would have also no valid claim against the Bombay Government even though the sale proceeds of those goods have been credited to it, for the court's order of forfeiture freed the goods from the lien for wharfage. It is, however, for Government to consider whether as a matter of policy Government should not pay the Railway Administration the wharfage charges when Government has benefited by the forfeiture of the goods.

Sd/-P.N.Lad. 2/7
Remembrancer of Legal Affairs.

U.R.S to C.S.D. No.6207 dated 2nd July 1948.

E.N.N.26/5/

4C-

Not desire to preserve the controversy with the Railway Boards the more politic course to accept their suggestion in its entirety.

Sd/- P.H.Lad.

C.K.N.26/5/
40.

6/10

Office of the R.L.A.

Since the Railway Board does not agree with theR.L.A's interpretation of section 13 of the Indian Railways Act, the only alternative for Government would seem to be to make a requisiton under section 13(3) (b). As regards that alternative attention is invited to paragraph 3 of my opinion No.9174, dated the 13th September 1947. In view of what was said therein it would not be proper to make a requisition. If the public Works Department does not desire to pursue the controversy with the Railway Board the more politic course is to accept their suggestion in its entirety.

Sd/-P.M.Lad. 7/10.

Remembrancer of Legal Affairs.

E.K.H.36/5/40. U.H. to P.W.D., No.9503, dated the 9th October 1948.

Office of the R.L.A.

Indian Railway Act, 1890.

Refund of wharfage and demurrage.

R.L.A's opinion No.919.d/15-9-47.

Government cannot claim from the consignors reimbursement of wharfage and demurrage recovered by the Railway. It may be difficult for Government to claim refund thereof for the period from 4-9-1946 to 3-10-1946 from the Railway in view of rule 30 of the M.S.M.Railway Goods Tariff, Part I. Substantive refund having beenreceived, this question need not therefore be pursued further.

Sd/-P.M.Lad. 28/10

Remembrancer of Legal Affairs.

U.R. to P.W.D., No. 9865. dated the 22nd October 1948.

E.K.H.38/8/
4C.